

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 76-1581

To be argued by  
DAVID J. GOTTLIEB

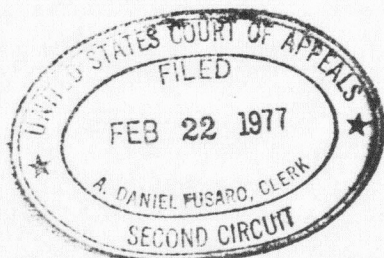
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,  
  
Plaintiff-Appellee,  
  
-against-  
  
LINDA DISTEFANO and  
SALLY DISTEFANO,  
  
Defendants-Appellants.

*B*  
*Pgs*  
Docket Nos. {76-1581  
                  {76-1582

2/22  
APPENDIX TO THE BRIEF  
FOR APPELLANT  
LINDA DISTEFANO

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



DAVID J. GOTTLIEB,  
Of Counsel.

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
LINDA DISTEFANO  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Courthouse  
Foley Square  
New York, New York 10007  
(212) 732-1971

PAGINATION AS IN ORIGINAL COPY



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PEITY OFFENSE PO  
OTHER MINOR OFFENSE MO  
OTHER MISDEMEANOR MAs

JUDGE/MAGISTRATE Assigned  
0720  
207 1

LINDA DISTEFANO

Case Filed  
Mo. Day  
6 11  
No. of Dets  
3

76 389

18-2113(a)(d), 371 Did conspire to bank robber and  
and 2 use of a dangerous weapon

BEST COPY AVAILABLE

KEY DATES & INTERVALS

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL
6-2-76	6-11-76	6-18-76	

MAGISTRATE		INITIALING	OUTCOME
Search Issued Return	DATE 6-2-76	INITIAL APPEARANCE DATE 6-14-76	DISM HELD FOR 30 OR OTHER CEEDING IN THIS DISTRICT
Summons Issued Return	6-2-76 ASC/070B	PRELIMINARY EXAMINATION OR REMOVAL 6-14-76	HELD FOR 60 OR OTHER CEEDING IN DISTRICT BE
Arrest Warrant Issued Return		INTERVIEWING PROSECUTOR	
COMPLAIN			
OFFENSE No. 00000000			

U.S. Attorney or Asst.

William Brodsky

ATTORNEYS

Legal Aid Society  
Katowitz, Esq.

EDWARDS 1; BLANDA 2; SALLY DI STEFANO 3

DATE	DISPOSITION
6-2-76	\$10,000 secured by deed to father's house and ORed until 6/3/76 to produce deed.
6-3-76	Deed produced. Copy of deed given to US. Atty. for filing of lien.
6-11-76	Deft. indicted - See 76 CR 389 Before NEAHER, J.
6-18-76	Before PLATT, J. - Case called for pleading Deft & counsel present Deft waives reading of indictment and enters a plea of not guilty Bail of \$10,000.00 PRB cont'd All motions ret. 7-6-76
7-1-76	Before PLATT, J. - Case called. Defts & counsel present. Motions set ddown for 7-6-76 at 9:30 AM. Trial set down for 7-12-76 at 9:30 A.M.
7-12-76	Before PLATT, J - case called - trial date set for 7-19-76
7-19-76	Before PLATT, J - case called - deft & counsel present - trial adjd to July 26, 1976 at 9:30 am. Excludable Delay: Cod
10-15-76	Before PLATT, J. - Case called and adjd to 10-22-76 7-12-76 for sentence.



DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
	(DOCUMENT NO.)		Interval (1)	Start Date End Date (2)	LT Code (3)	Total Days (4)
7/20/76	Voucher for compensation for expert services forwarded to Atty, for signature.					
7-26-76	Before PLATT, J - case called - deft & atty present - defts motion for adjournment is denied - defts motion to suppress-hearing ordered and begun - Trial contd to July 27, 1976. Hearing concluded.					
7/27/76	Before PLATT, J. - Case called. Deft & Counsel present. Trial resumed. Trial adjd to 7/28/76 at 9:30 a.m.					
7/28/76	Before PLATT, J. - Case called. Counsel present. Deft present but arrived late - 10:25 a.m. Defts motion for a Judgment of Acquittal - DENIED. Govts motion to remand deft - DENIED as to remand but court reserves decision as to whether defts behavior constitutes contempt. Trial adjd to 7/29/76 at 9:30 a.m.					
7/29/76	By PLATT, J. - Order of sustenance filed.					
7/29/76	Before PLATT, J.- Case called. Deft & Counsel present. Trial resumed. Jury retires for deliberations. The Jury excused to resume deliberations on 7/30/76 at 10:00 a.m.					
7-30-76	Before PLATT, J - case called - deft & counsel present - Jury resumed deliberations - Jury returns with a verdict of guilty on counts 1 and 3 - sentence adjd without date - bail contd on condition that deft be and remain under the supervision of Pre Trial services - defts motion reserved until sentencing. Trial concluded - Jury excused. Defts motion for mistrial denied with leave to renew.					
8/2/76	By PLATT, J. - Order of sustenance filed.					
9/13/76	Letter from E. Kelly to Judge Platt; re: psychiatric examination and report on deft by Augustus Kinzel, M.D.					
9/13/76	Letter to Ms. Rose Rosenblau, Auditor from Judge Platt, in regards to Form 21 on the CJA Form stating the purpose of the psychiatric examination. The CJA requested is now to be disregarded because the L.A. S. will pay the psychiatric examination which was requested on the CJA form.					
10-22-76	Before PLATT, J - case called - deft & atty P. Katowitz present - deft sentenced for observation and study pursuant to 18:5010(e) the results of such study to be reported to the court within 60 days or such additional time as the court may grant at which time the deft shall be returned to the court for imposition of such sentence as the court may then find to be appropriate. Observation and study commitment stayed pending appeal. bail contd pending appeal.					
10-22-76	Judgment and commitment filed - certified copies to Marshal					
10-27-76	Notice of appeal filed (no fee).					
10-27-76	Docket entries and duplicate of notice mailed to the court of appeals.					
11/22/76	Voucher for compensation for expert services filed.					



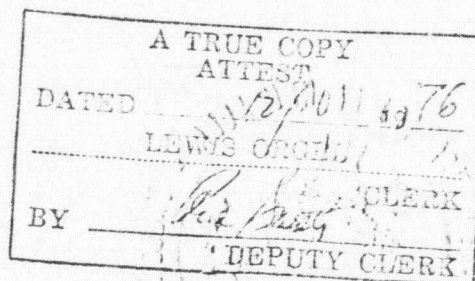
UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET U. S. vs

76 CR 389

SALLEY DISTEFANO

76 389  
Yr. Docket

DATE	PROCEEDINGS (continued)	V. EXCLUDAE
	(Document No.)	(a) (b)
	denied. Deft is sentenced on Count 1 for imprisonment for six (6) years pursuant to T-18:4205(b)(2), on count 2 for imprisonment for six (6) years pursuant to T-18:4205(b)(2), and on count 3 for imprisonment for five (5) years pursuant to T-18:4205(b)(2). Such sentence of imprisonment to run concurrently with the sentences of imprisonment imposed under counts 1 and 2 of the indictment. Bail (\$10,000 Surety) continued pending appeal. Clerk to file Notice of Appeal.	
11/26/76	Judgment & Commitment filed. Certified copies to Marshals and probation.	
11/26/76	Notice of Appeal filed.	
11/26/76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.	
11/26/76	Defts financial affidavit filed.	
12-6-76	Stenographers transcript filed dated July 26, 1976 (copy)	
12-7-76	Voucher for Compensation for Counsel and Affidavit forwarded to the Court of Appeals for Approval.	
12-10-76	Record on appeal certified and handed to J.Gill for delivery to the court of appeals	



TRP:LAA:lr  
F.#761,763

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

PATRICK J. EDWARDS,  
RONALD J. BLANDA,  
SALLY DI STEFANO and  
LINDA DI STEFANO,

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 28th day of May 1976, within the Eastern District of New York, the defendants PATRICK J. EDWARDS, RONALD J. BLANDA, SALLY DI STEFANO and LINDA DI STEFANO knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Chemical Bank, 1176 Portion Road, Holtsville, New York, approximately Four

B  
76CR 339

I N D I C T M E N T

Cr. No. \_\_\_\_\_  
(T. 18, U.S.C., §2113(a)(d),

F 1 §2E §371)

IN CLERK'S OFFICE

U. S. DISTRICT COURT E.D. N.Y.

★ JUN 11 1976 ★

TIME A.M. ....  
P.M. ....



Thousand Eight Hundred Forty Six Dollars (\$4,846.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chemical Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2)

COUNT TWO

On or about the 28th day of May 1976, within the Eastern District of New York, the defendants PATRICK J. EDWARDS, RONALD J. BLANDA, SALLY DI STEFANO and LINDA DI STEFANO knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Chemical Bank, 1176 Portion Road, Holtsville, New York, approximately Four Thousand Eight Hundred Forty Six Dollars (\$4,846.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chemical Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense

①



the defendants PATRICK J. EDWARDS, RONALD J. BLANDA, SALLY DI STEFANO and LINDA DI STEFANO did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2)

COUNT THREE

On or about the 28th day of May 1976, within the Eastern District of New York, the defendants PATRICK J. EDWARDS, RONALD J. BLANDA, SALLY DI STEFANO and LINDA DI STEFANO did combine, conspire, confederate and agree together to commit an offense against the United States in violation of Title 18, United States Code, Sections 2113(a), 2113(d), and 2 by conspiring to rob, by force, violence and intimidation, and with a dangerous weapon, the Chemical Bank, 1176 Portion Road, Holtsville, New York, the deposits of which bank were

then and there insured by the Federal Deposit Insurance Corporation.

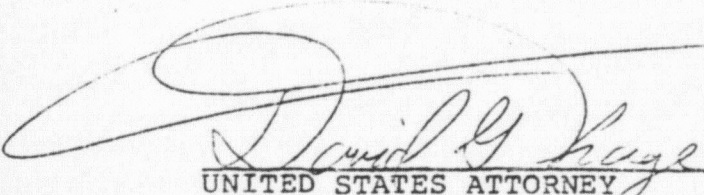
In furtherance of the said conspiracy and in order to effectuate the purposes thereof, there were committed the following:

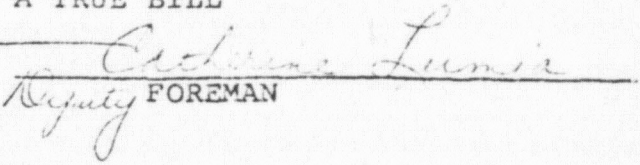
OVERT ACTS

1. On or about the 28th day of May 1976, within the Eastern District of New York, the defendants PATRICK J. EDWARDS, RONALD J. BLANDA and SALLY DI STEFANO arrived in the vicinity of the Chemical Bank, 1176 Portion Road, Holtsville, New York.

2. On or about the 28th day of May 1976, within the Eastern District of New York, the defendant LINDA DI STEFANO arrived at the Chemical Bank, 1176 Portion Road, Holtsville, New York. (Title 18, United States Code, Section 371)

A TRUE BILL

  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

  
Deputy FOREMAN



C

\* \* \* \* \*

THE COURT: Good morning, ladies and  
Gentlemen. I'm going to read to you, very  
shortly, the instructions on the law in the

case; however, I should point out to the jury that one little thing happened. One of the jurors, last night, and I won't say which one, wrote out some notes of the questions to ask the court stenographer at the conclusion of the case.

I have asked Mr. Nims, the Clerk of the Court, to seal those notes and the reason for it is this:

As you will hear in the instructions from the Court, you should consider the evidence, the testimony and exhibits, which you've heard and which have been marked in evidence, as a whole, just as you should consider the instructions I'm about to give to you, as a whole.

At least in the first instance, you should not attempt to start right off by having testimony re-read. You ought to try to consider collectively the facts you've heard, the testimony you've heard, the exhibits that have been marked in evidence, as a whole.

If you start to have one witness or a portion of one witness' testimony re-read



1 to you, that will assume, perhaps assume  
2 more importance as contrasted with the other  
3 evidence in the case and it shouldn't.

4 You must consider all uniformly, at least  
5 initially. If you find you can't recall what  
6 a particular witness said, after giving all  
7 the evidence a fair consideration, I would say  
8 that then and then only should you ask for  
9 individual bits to be re-read to you or  
10 raise questions with respect to one witness  
11 against the other but in the first instance,  
12 at least, you should attempt to consider the  
13 evidence as a whole and the same is true with the  
14 instructions I'm about to give to you.

15 You should not try to isolate one bit  
16 and put undue emphasis on that. You must  
17 consider all in the light of instructions  
18 I'm going to give you.

19 As I'm going to read the instructions  
20 to you, I realize it makes it more difficult  
21 for you to follow, if I read it, but on the  
22 other hand, it minimizes the risk of errors,  
23 if I read it, and that's important too.

24 Now that you have heard the evidence and  
25

1 the arguments, it becomes my duty to give  
2 the instructions of the Court as to the law  
3 applicable to this case.

4 It is your duty as jurors to follow the  
5 law as stated in the instructions of the  
6 Court and to apply the rules of the law, so  
7 given, to the facts as you find them from the  
8 evidence in the case.

9 You are not to single out one instruction  
10 alone as stating the law but must consider  
11 the instructions as a whole. Neither are  
12 you to be concerned with the wisdom of any  
13 rule of law stated by the Court.

14 Regardless of any opinion you may have  
15 as to what the law ought to be, it would be  
16 a violation of your sworn duty to base a  
17 verdict upon any other view of the law than  
18 that given in the instructions of the Court  
19 just as it would be a violation of your sworn  
20 duty, as judges of the facts, to base your verd-  
21 ict on any other view of the law than given  
22 in the instructions of the Court just as it  
23 would be a violation of your sworn duty, as  
24 judges of the facts, to base your verdict on  
25



1 anything but the evidence in the case.

2 You must not permit yourselves to be  
3 governed by sympathy, bias, prejudice or any  
4 other considerations not found on evidence  
5 and these instructions on the law.

6 Justice through trial by jury must  
7 always depend upon the willingness of each  
8 individual juror to seek the truth as to the  
9 facts from the same evidence presented to  
10 all the jurors and to arrive at a verdict  
11 by applying the same rules of law as given  
12 in the instructions of the Court.

13 You have been chosen and sworn as jurors  
14 in this case to try the issues of fact pre-  
15 sented by the allegations of the indictment  
16 and the denial by the not guilty pleas of  
17 the defendants.

18 You are to perform this duty without bias  
19 or prejudice as to any party. Again, the  
20 law does not permit jurors to be governed by  
21 sympathy, prejudice or public opinion.

22 Both the defendants and the public expect  
23 that you will carefully and impartially con-  
24 sider all the evidence in the case, follow  
25

1 the law as stated by the Court and reach a  
2 just verdict regardless of the consequences.

3 I am not going to send the exhibits,  
4 which have been received in evidence, with  
5 you as you retire for your deliberations.

6 You are entitled, however, to see any  
7 and all of them as you consider your verdict.  
8 I suggest that you begin your deliberations and  
9 then, if it would be helpful to you, you may  
10 ask for any or all of the exhibits simply  
11 by sending a note to me through one of the  
12 marshals who will be stationed outside the  
13 jury room door.

14 As I said in the beginning of the case,  
15 the indictment is but a method or form of  
16 accusing the defendants of a crime.

17 It is not evidence of any kind against  
18 the accused. There are two types of evidence  
19 from which a jury may properly find a defend-  
20 ant guilty of a crime.

21 One is direct evidence, such as in the  
22 testimony of an eye witness. The other is  
23 circumstantial evidence, the proof of facts  
24 and circumstances which rationally imply  
25



1 the existence or non-existence of other facts  
2 because such other facts usually follow,  
3 according to the common experience of mankind.

4 For example, the footprint of a man in  
5 the sand implied to Robinson Crusoe that there  
6 was another man with him on the desert island  
7 and indeed there was the man, Friday.

8 Thus, on the one hand you may have direct  
9 evidence of the issues and on the other hand you  
10 may have circumstantial evidence of the issues.

11 The law does not hold that one type of evi-  
12 dence is necessarily of better quality than  
13 the other.

14 The law requires only that the Government  
15 prove its case beyond a reasonable doubt,  
16 both on the direct and circumstantial evi-  
17 dence.

18 At times the jury might feel that circum-  
19 stantial evidence is of better quality. At  
20 other times, they may feel direct evidence  
21 is of better quality.

22 That judgment is left entirely up to  
23 you. As a general rule, the law makes no dis-  
24 tinction between direct and circumstantial  
25

evidence but simply requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

The law presumes the defendants to be innocent of a crime. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against him or her and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the defendants.

So, the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendants guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant, in a criminal case, the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror



1 because of his or her reluctance to perform an  
2 unpleasant task.

3 It does not mean a doubt arising from the  
4 natural sympathy which we all have for others. It  
5 is not necessary for the Government to prove guilt of  
6 the defendants beyond all possible doubt.

7 If that were the rule, very few people would  
8 ever be convicted because it is practically im-  
9 possible for a person to be absolutely sure and  
10 convinced of any contraverted fact which, by its  
11 nature, is not susceptible of mathematical certainty.

12 In consequence, the law says that a doubt  
13 should be a reasonable doubt, not a possible doubt.  
14 A reasonable doubt is a doubt based upon reason  
15 and common sense, a kind of doubt that would make  
16 a reasonable person hesitate to act.

17 Proof beyond a reasonable doubt must, there-  
18 fore, be proof of such a convincing character  
19 that you would be willing to rely and act upon it  
20 unhesitatingly in the most important of your own  
21 affairs.

22 The jury will remember that a defendant is  
23 never to be convicted on mere suspicion or con-  
24 jecture.  
25

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

The requirement of proof beyond a reasonable doubt operates on the whole case and not on the specific bits of evidence.

Each individual item of evidence need not be proven beyond a reasonable doubt. Now, it is your duty to give separate personal consideration to the case of each individual defendant.

When you do so, you should analyse what the evidence in the case shows with respect to that individual, leaving out of consideration, as well, any evidence admitted for the other defendant in this case.

The statute alleged to have been violated in count one of the indictment reads in part as follows:

..."Whoever by force and violence or by intimidation, attempts to take from a person or premise of another any property or money or any other thing of value belonging to or in the care, custody, control, management or



possession of any bank, credit union or any savings and loan association shall be in violation of the law."

In addition, count one of the indictment cites violation of Section 2113 (a) and Section 2 of Title 18, United States Code, which is the aiding and abetting section, which I will read to you:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"Whoever wilfully causes an act to be done which, if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Now, count one reads:

"On or about the 28th day of May, 1976, within the Eastern District of New York, the defendants Patrick J. Edwards, Ronald J. Blanda, Sally DiStefano and Linda DiStefano knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Chemical Bank, 1176 Portion Road, Holtsville, New York,

approximately \$4,846.00 in United States currency, which money was in the care, custody, control, management and possession of the said Chemical Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation (Title 18, U.S. Code, Section 2113 (a) and Section 2)" which is what I just read to you and Section 2, the aiding and abetting clause, which I just read to you.

The essential elements of the crime charged in count one of the indictment, which must be proved beyond a reasonable doubt and in this case, of course, you're concerned with the essential elements in so far as it charges the defendants aided and abetted in the same:

1. The act or acts of taking, from the presence or persons of another, money belonging to or in the care, custody, control, management or possession of any bank as charged;
2. The act or acts of taking by force, violence or by intimidation;
3. Doing such an act or acts knowingly and willfully;



4. The bank was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

Now, the statute alleged to have been violated in count two of the indictment reads in part as follows:

"Whoever, in committing or attempting to commit any offense defined in subsection (a)," which I read to you in connection with count 1 of this section, assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device" shall be in violation of the law.

That count also charges a violation of the aiding and abetting section, which I read to you.

Count two of the indictment reads:

"On or about the 28th day of May, 1976, within the Eastern District of New York, the defendants Patrick J. Edwards, Ronald J. Blanda, Sally Di Stefano and Linda DiStefano knowingly, by force, violence and intimidation, did take

from the person and presence of employees of the Chemical Bank, 1176 Portion Road, Holtsville, New York, approximately \$4,846.00 in United States currency, which money was in the care, custody, control, management and possession of the said Chemical Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants Patrick J. Edwards, Ronald J. Blanda, Sally DiStefano and Linda DiStefano did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present, by the use of a dangerous weapon," which I just read to you or referred to you.

The following are the essential elements of the crime which are required to be proven beyond a reasonable doubt in order to establish the offense of charge 2 of the indictment and again bearing in mind



the case of these two defendants in that they are charged with aiding and abetting:

1. The act or acts of taking, from the presence or persons of another, money belonging to or in the care, custody, management and possession of a bank, as charged; and

2. The act or acts of taking by force, violence or by intimidation; and

3. The act or acts of assaulting or putting in jeopardy the life of any person by the use of a dangerous weapon or device while engaged in taking such money from the bank, as charged; and

4. Doing such act or acts knowingly or wilfully; and

5. The bank was one, the deposits of which were insured by the F.D.I.C.

As you see, in Section 2113 of the U.S. Code, that mentions banks insured by the F.D.I.C. One of the Government's witnesses testified that the Chemical Bank was insured by the F.D.I.C. and I believe there was an exhibit marked in evidence which so evidenced that fact.

Now, with respect to both counts one and two, you will recall the words, "by intimidation" were used and "to take by intimidation," which means wilfully to take or attempt to take, by putting in fear of bodily harm.

Such fear must arise from the willful conduct of the accused rather than from some mere temperamental timidity of the victim; however, the fear of the victim need not be so great as to result in terror, panic or hysteria.

A taking or an attempted taking, by "intimidation" must be established by proof of one or more acts or statements of the accused which were done or made in such a manner and under such circumstances as would produce in the ordinary person fear of bodily harm; however, actual fear need not be proved.

Fear, like intent, may be inferred from statements made and acts done or omitted by the accused and by the victim as well and from all the surrounding circumstances shown by the evidence in the case.



1 With respect to count two, if the jury  
2 should find beyond a reasonable doubt from  
3 the evidence in the case that the accused  
4 did willfully commit robbery of the bank,  
5 as charged, then the jury must proceed to  
6 determine whether the evidence in the case  
7 establishes that the accused, in committing  
8 robbery of the bank, assaulted or put in  
9 jeopardy the lives of the said bank employees  
10 as well as the lives of other persons present,  
11 as charged in the indictment.

12 Any willful attempt or threat to  
13 inflict injury upon the person of another,  
14 when coupled with an apparent present  
15 ability to do so or any intentional display  
16 of force such as would give the victim  
17 reason to fear or expect immediate bodily  
18 harm, constitutes an assault.

19 An assault may be committed without  
20 actually touching or striking or doing bodily  
21 harm to the person of another so a person  
22 who has the apparent present ability to  
23 inflict bodily harm or injury upon another  
24 person and willfully attempts or even threatens  
25

1 to inflict such bodily harm, as by intention-  
2 ally flourishing or pointing a pistol or gun  
3 at another person, may be found to have assault-  
4 ed such person.

5 As to count two, a "dangerous weapon or  
6 device" includes anything capable of being  
7 readily operated, manipulated, wielded or  
8 otherwise used by one or more persons to  
9 inflict severe bodily harm or injury upon  
10 another person so, an operable firearm, such  
11 as a pistol, revolver or other "gun," capable  
12 of firing a bullet or other "ammunition," may  
13 be found to be a dangerous weapon or device.

14 To "put in jeopardy the life" of a person  
15 "by the use of a dangerous weapon or device"  
16 means then to expose such person to a risk  
17 of death or to the fear of death by the use  
18 of such dangerous weapon or device.

19 Any variance between the allegations of  
20 the indictment and the evidence in the case  
21 as to the size and type of any firearm or  
22 gun, which may have been involved in the  
23 commission of the alleged offense, is im-  
24 material.  
25



Section 2, as I indicated before, of  
Title 15 of the United States Code is cited  
in both counts, one and two and reads:

"Whoever commits an offense against  
the United States or aids, abets, coun-  
sels, commands, induces or procures  
its commission, is punishable as a  
principal.

"Whoever willfully causes an act to be  
done, which if directly performed by  
him or another would be an offense against  
the United States, is punishable as a  
principal."

In other words, every person who  
willfully participates in the commission of  
a crime may be found guilty of that offense.

Participation is willful if done vol-  
untarily and intentionally and with a specific  
intent to do something the law forbids or  
with a specific intent fails to do something  
the law requires to be done.

That is to say with a bad purpose, either  
to disobey or to disregard the law.

In order to aid and abet another to commit

1 a crime it is necessary that the accused  
2 willfully associate herself with the criminal  
3 venture and willfully participate in it  
4 as she would in something she wishes to bring  
5 about.

6 That is to say that she willfully seeks  
7 by some act or omission of hers to make the  
8 criminal venture succeed.

9 An act or omission is willfully done if  
10 done voluntarily and intentionally and with  
11 the specific intent to do something the law  
12 forbids or with the specific intent to fail  
13 to do something the law requires to be done.

14 That is to say with bad purpose, either  
15 to disobey or to disregard the law. You, of  
16 course, may not find any defendant guilty  
17 unless you find beyond a reasonable doubt  
18 that every element of the offense, as de-  
19 fined in these instructions, was committed  
20 by some person or persons and that the de-  
21 fendant participated in its commission.

22 Mere presence at the scene of the crime  
23 and knowledge that a crime is being committed  
24 are not sufficient to establish that the  
25



1 defendant aided and abetted the crime unless  
2 you find beyond a reasonable doubt that the  
3 defendant was a participant and not merely  
4 a knowing spectator.

5 An act is done "knowingly" if done  
6 voluntarily and intentionally and not be-  
7 cause of mistake or accident or other inno-  
8 cent reason.

9 The purpose of adding the word  
10 "knowingly" was to insure that no one would be  
11 convicted for an act done because of mistake  
12 or accident or other innocent reason.

13 With respect to an offense such as  
14 charged in this case, specific intent must  
15 be proved beyond reasonable doubt before  
16 there can be a conviction.

17 An act is done "willfully" if done volun-  
18 tarily and intentionally if done voluntarily  
19 and intentionally and with the specific  
20 intent to do something the law forbids; that  
21 is to say with bad purpose, either to disobey  
22 or disregard the law.

23 It is charged in count three of the  
24 indictment that on or about the 28th day of  
25

May, 1976, within the Eastern District of New York, the defendants Patrick J. Edwards, Ronald J. Blanda, Sally DiStefano and Linda DiStefano did combine, conspire, confederate and agree together to commit an offense against the United States in violation of Title 18, United States Code, Sections 2113 (a), 2113 (d) and 2 by conspiring to rob, by force, violence and intimidation and with a dangerous weapon, the Chemical Bank, 1176 Portion Road, Holtsville, New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation.

In furtherance of the said conspiracy and in order to effectuate the purposes thereof, there were committed the following overt acts:

1. On or about the 28th day of May, 1976, within the Eastern District of New York, the defendants Patrick J. Edwards, Ronald J. Blanda and Sally DiStefano arrived in the vicinity of the Chemical Bank, 1176 Portion Road, Holtsville, New York.

2. On or about the 28th day of May, 1976, within the Eastern District of New York, the



defendant Linda DiStefano arrived at the Chemical Bank, 1175 Portion Road, Holtsville, New York, all in violation of Title 18, United States Code, Section 371.

That Section provides that:

"If two or more persons conspire...to commit any offense against the United States...and one or more of such persons do any act to effect the object of the conspiracy," each is guilty of an offense against the United States.

The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment:

1. That there was an agreement or conspiracy between two or more persons to violate the law, as charged in the indictment;
2. That the conspiracy was so willfully formed and existing for the purpose of robbing by force, violence and intimidation and with a dangerous weapon the Chemical Bank

at Holtsville, New York, the deposits of which bank were then and there insured by the F.D.I.C.;

4. That the defendant willfully became a member of the conspiracy;

5. That one of the conspirators, thereafter, knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged;

6. That such overt act was knowingly done in furtherance of the object of the conspiracy, as charged;

7. That the defendant was knowingly and willfully a member of the conspiracy with the intent to further one of its objectives.

If the jury should find beyond a reasonable doubt from the evidence in the case that the existence of the conspiracy charged in the indictment has been proved and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete



and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose so a conspiracy is a kind of partnership in criminal purposes in which each member becomes the agent of every other member.

The gist of the offense is a combination or agreement to disobey or to disregard the law. Mere similarity of conduct among various persons and the fact they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

Mere association may not, in and of itself, be the basis for an inference of guilt of conspiracy; however, the evidence in the case need not show that the members entered into any express or formal agreement or that they directly, by words spoken or in writing stated

between themselves what their object or purpose was to be or the details thereof or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show, beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy nor that all means or methods, which were agreed upon, were actually used or put into operation nor that all of the persons charged to have been members of the alleged conspiracy were such.

What the evidence in the case must establish, beyond a reasonable doubt, is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish



1 some object or purpose of the conspiracy, as  
2 charged in the indictment and that two or  
3 more persons, including one or more of the  
4 accused, were knowingly members of the conspiracy,  
5 as charged in the indictment.

6 In your consideration of the evidence in  
7 the case as to the offense of conspiracy charged,  
8 you should first determine whether or not  
9 the conspiracy existed, as alleged, in the in-  
10 dictment.

11 If you conclude that the conspiracy did  
12 exist, you should next determine whether or  
13 not each of the defendants willfully became  
14 a member of the conspiracy.

15 If it appears beyond a reasonable doubt,  
16 from the evidence in the case, that the con-  
17 spiracy alleged in the indictment was willfully  
18 formed and the defendant became a member of  
19 the conspiracy, either at its inception or  
20 afterwards, and that thereafter one or more  
21 of the conspirators committed one or more overt  
22 acts in furtherance of some object or purpose  
23 of the conspiracy, then there may be a convic-  
24 tion even though the conspirators may not have  
25

succeeded in accomplishing their common object or purpose and, in fact, may have failed so doing.

The extent of any defendant's participation, moreover, is not determinative of her guilt or innocence.

A defendant may be convicted as a conspirator even though she may have played only a minor part in the conspiracy.

An overt act is any act knowingly committed by one of the conspirators in an attempt to accomplish some object or purpose of the conspiracy.

The overt act need not be criminal in nature, if considered separately and apart from the conspiracy.

It may be as innocent as the act of a man walking across the street or driving an automobile or using a telephone.

It must, however, be an act which follows and tends toward accomplishment of the plan or scheme.

It must be knowingly done in furtherance of some object or purpose of the conspiracy charged



in the indictment.

It is not necessary that all of the overt acts charged in the indictment were performed. One overt act is sufficient.

One may become a member of the conspiracy without full knowledge of all the details of the conspiracy.

On the other hand, a person who has no knowledge of a conspiracy but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Before the jury may find one or more or all of the defendants or any other person has become a member of the conspiracy, the evidence in the case must show, beyond a reasonable doubt, that the conspiracy was knowingly formed and that the said defendants or other person, claimed to have been members, willfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily or intentionally and with specific intent to do something the law

forbids; that is to say to act or participate with the bad purpose, either to disobey or to disregard the law so if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages, advises or assists for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

In determining whether a conspiracy existed the jury should consider the actions and the declarations of all the alleged participants; however, in determining whether a particular defendant was a member of a conspiracy, if any, the jury should consider only his acts and statements.

She cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed and that she was one of its members.

Whenever it appears, beyond a reasonable doubt, from the evidence in the case that a conspiracy existed and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly



1 done by any person, likewise found to be a  
2 member, may be considered by the jury as evidence  
3 in the case as to the defendant found to have  
4 been a member, even though the statements and  
5 acts made may have occurred in the absence and  
6 without the knowledge of the defendant provided  
7 such statements and acts were knowingly made and  
8 done during the continuancy of such conspiracy  
9 and in furtherance of some object or purpose of  
10 the conspiracy.

11 Otherwise, any admission or incriminatory  
12 statement made or act done outside of court by  
13 one person may not be considered as evidence  
14 against any person who was not present and who  
15 did not hear the statement made or saw the act  
16 done.

17 Therefore, statements of any conspirator,  
18 which are not in furtherance of the conspiracy,  
19 or made before its existence or after its term-  
20 ination may be considered as evidence only  
21 against the person making them.

22 The indictment charges a conspiracy among  
23 two defendants, Sally DiStefano and Linda DiStefano  
24 and two other persons, Messrs. Edwards and Blanda  
25

against the United States, all of whom are  
named in the indictment as co-conspirators.

A person cannot conspire with himself or  
herself and, therefore, you cannot find any of  
the defendants guilty unless you find, beyond  
a reasonable doubt, that he participated in  
the conspiracy, as charged, with at least one  
other person.

With this qualification, you may find all  
of the defendants guilty or one of the defend-  
ants guilty and one not guilty or both guilty  
or both not guilty, all in accordance with  
these instructions and the facts you find.

Another claim or defense is that the wit-  
ness Edwards knowingly testified falsely for  
reasons of his own, such as to obtain his  
own freedom from imprisonment, that his testi-  
mony is unbelievable and without his testi-  
mony the Government's case must fail.

It is for you and you alone to determine  
whether or to what extent, based on all the  
evidence and these instructions, Mr. Edwards  
is to be believed and to what extent, if at  
all, his testimony is corroborated.



1 In addition to the evidence with re-  
2 spect to the bank robbery, the Government  
3 offered testimony by Mr. Edwards that Sally  
4 DiStefano accompanied Blanda and a friend to  
5 Manhattan on the night of May 28, 1976 for  
6 a "coke" party and contributed a stack of  
7 singles for the purchase of cocaine.

8 Whether this happened as he testified  
9 is, of course, for you to determine but in  
10 any event, as I instructed you during the trial,  
11 it is to be considered by you not as proof of  
12 the commission of the crime in the aiding and  
13 abetting or conspiracy charged in this indict-  
14 ment but only for the following limited purp-  
15 oses:

16 The fact that the accused may have committed  
17 another offense at another time is not any evi-  
18 dence or proof whatever that at another time  
19 the accused committed the offense charged  
20 in the indictment.

21 Evidence as to an alleged earlier offense  
22 may not be considered by the jury in determ-  
23 ining whether or not the accused did the act  
24 charged in the indictment nor may such evidence  
25

1 be considered for any purpose whatsoever unless  
2 the jury finds that the evidence in the case  
3 established, beyond a reasonable doubt, that  
4 the accused did the act charged in the indict-  
5 ment, leaving aside whether she did it inten-  
6 tionally or willfully and not because of  
7 accident or other insufficient reason.

8 If the jury should find, beyond a reason-  
9 able doubt that the accused did the act  
10 charged in the indictment, then the jury may  
11 consider evidence as to an alleged earlier  
12 offense in determining motive, the state of  
13 mind or intent with which the accused did the  
14 act charged in the indictment and where all  
15 the elements of an alleged earlier offense  
16 are established by evidence which is clear  
17 and conclusive, the jury may, but is not  
18 obliged to, draw the inference and find that  
19 in doing the act charged in the indictment,  
20 the accused acted willfully, knowingly and  
21 with such intent and not because of mistake or  
22 accident or other innocent reason.

23 Statements and arguments of counsel are  
24 not evidence in the case unless made as an  
25



admission or stipulation of fact.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence and regard as proved the fact or event which has been judicially noticed but you are not required to do so since you are the sole judges of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and all exhibits received in evidence, regardless of who may have produced them and all facts which may have been admitted or stipulated and all facts and events which may have been judicially noticed and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on the evidence only.

In your consideration of the evidence, you are not limited to the bald statements of the witnesses.

In other words, you are not limited solely to what you see and hear as the witnesses testify.

You are permitted to draw, from facts which you find have been proved, such reasonable inference as you feel are justified in



the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

Evidence relating to any statement or act or omission claimed to have been made or done by a defendant outside of court and after a crime has been committed should always be considered with caution and weighed with great care.

All such evidence should be disregarded entirely unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement or act or omission was knowingly made or done.

A statement or act or omission is knowingly made or done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

In determining whether any statement or act or omission claimed to have been made by a defendant outside of court and after a crime has been committed, was knowingly made or done, the jury should consider the age, sex, training, education, occupation and physical and mental condition of the defendant and her treatment while in custody or under interrogation, as shown by the evidence in the case.

Also, you should consider all other circumstances in evidence surrounding the making of the statement or act or omission, including whether before the statement or act or omission was made or done the defendant knew or had been told and understood that she was not obligated or required to make or do the statement or act or omission claimed to have been made or done by her; that any statement or act or omission which she might make or do could be used against her in court; that she was entitled to the assistance of counsel before making any statement, either oral or in writing, or before doing any act or omission; and that if she was without money or means to retain



counsel of her own choice, that an attorney of her own choice, that an attorney would be appointed to advise and represent her free of cost or obligation.

If the evidence in the case does not convince you beyond a reasonable doubt that a statement was made voluntarily and intentionally, you should disregard it entirely.

On the other hand, if the evidence in the case does show, beyond a reasonable doubt, that a statement was, in fact, voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the statement.

You will recall that counsel for the defendant Linda DiStefano objected to Agent Sweeney testifying about his interview with her and at that time the Government counsel claimed that it was being offered as an untrue exculpatory statement by her.

Whether the statements allegedly made by Linda DiStefano to Agent Sweeney, in fact, were made and whether they are, in fact, false

or untrue is, of course, for you to determine.

The fact that a lawyer, such as Mr. Adlerstein, made the claim is not evidence. If you find, however, that the facts were so made and they were false, then the law with respect to the same is as follows:

Evidence has been introduced that the defendant in this case, Linda DiStefano, made certain exculpatory statements or claimed statements outside of this courtroom, explaining her actions.

If the jury finds such statements were untrue and the defendant made them with knowledge of their falsity, the jury may consider the statements as circumstantial evidence of the defendant's guilt.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief.



Consider each witness' intelligence, motive and state of mind and demeanor and manner while on the stand.

Consider the witness' ability to observe the matters to which he or she has testified and whether he or she impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony.

Two or more persons witnessing an incident or a transaction may see or hear it differently and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or unimportant detail and whether

the discrepancy results from innocent error or intentional falsehood.

After making your judgment, you'll give the testimony of each witness the credibility you think it deserves.

Now, an accomplice, such as Mr. Edwards, is one who unites with another person in the commission of a crime, voluntarily and common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged.

On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence; however, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict the defendants upon the unsupported testimony of an alleged accomplice unless you believe that unsupported testimony beyond a reasonable doubt.



The law does not prohibit the use of an accomplice but whether you approve of their use is not to enter into your consideration of this case.

In certain types of crime, the Government, of necessity, is frequently compelled to rely upon the testimony of accomplices, persons with criminal records or informers.

Otherwise, it would be difficult to detect or prosecute some wrongdoers and this is particularly true in conspiracy cases.

Often, the Government has no choice in the matter. It must take the witnesses to the transaction as they are.

It is the universal rule in the federal courts that defendants may be convicted on testimony of an accomplice, standing alone, if you believe such testimony beyond a reasonable doubt.

This would still be so, even though the accomplice was a confirmed criminal.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are incon-

sistent with his present testimony.

The earlier contradictory statements are admissible only to impeach the credibility of the witness and not to establish the truth of these statements.

It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony; that is, of a crime punishable by imprisonment for a term of years.

Prior conviction does not render a witness incompetent to testify but is merely a circumstance which you may consider in determining the credibility of the witness.



It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

The law does not compel a defendant in a criminal case to take the witness stand and testify and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify.

As stated before in these instructions during the trial and during the prosecution's summation and I emphasize again, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the duty of the attorneys on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible.

You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing the testimony or other evidence to be introduced over the objection of

40-1  
an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from what the witness may have said.

The fact that the Court has asked one or more questions of a witness for clarification or advisability of evidence purposes is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendants in this case and you are not to draw any such inference therefrom.

That determination is up to you and you alone based on all the facts in this case and the applicable law based on these instructions.



You are here to determine the guilt or innocence of the two defendants, Sally DiStefano and Linda DiStefano, from the evidence in the case.

You are not called upon to return a verdict as to the guilt or innocence of any other person or persons so, if the evidence in the case convinces you, beyond a reasonable doubt, of the guilt of the accused, you should so find even though you may believe one or more other persons are guilty.

If any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find either or both the defendants not guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto.

Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so, without violence to individual judgment.



Each of you must decide the case for himself but do so only after a discussion of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion, if convinced it is erroneous.

Do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them.

You are expected to use your good common sense. Consider the evidence in the case for only those purposes for which it has been



admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

You must render a verdict with respect to each of the defendants and with respect to each of them, as to each of the three counts so there will be six separate verdicts, one as to each defendant and one as to each of the three counts in the indictment.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence



of the accused.

Upon retiring to the jury room, the lady seated closest to me, Juror One, will act as your forelady unless she chooses not to do so.

If she chooses not to do so, then you should elect one from your members and he will act as your spokesman in court.

If it becomes necessary during deliberations to communicate with the Court, you may send a note by the Marshal.

No member of the jury should attempt to communicate with the Court other than by writing and the Court will never communicate with any member of the jury touching on the merits of the case; otherwise, it will be in writing or in open court.

You will note from the oath which will be taken shortly by the Deputy Marshal that he as well as all other persons are forbidden to communicate with the jury.

Bear the following in mind because it is very important:

You are never to reveal to any person, not



even to the Court, not even to me, how the jury stands numerically or otherwise on the question of guilt or innocence of the accused until you have reached a unanimous verdict.

In other words, don't send me a note saying "we stand thus and so and so". If you do that, we will have to declare a mistrial and retry the whole case.

If the occasion arises and you become hopelessly deadlocked, write me a note and say it's deadlocked but don't tell me what the score is.

If you reach a unanimous verdict, write me a note and say you reached a unanimous verdict and send a note to the Clerk announcing your verdict in court.

We will take a 5-minute recess during which time you are not to discuss the case, while I discuss these instructions with the attorneys and if they feel additional instructions are necessary.

During this 5-minute recess, do not discuss the case. Bear in mind what I said.



If you wish to communicate with the Court, you must do so, preferably, in writing and signed by the juror so hold your questions.

(Whereupon, the jury left the courtroom at 10:30 a.m.)

MR. ADLERSTEIN: I find no objection to the charge.

THE COURT: Mr. Scotto?

MR. SCOTTO: Regarding the charge of circumstantial evidence, I heard your Honor say regarding Robinson Crusoe. I know we made a request regarding a charge and I did not hear exactly what your Honor said regarding circumstantial evidence unless it excludes everything, that unless it points to guilt, the jury must vote in favor of innocence.

In other words, they must resolve it in favor of the defendant.

THE COURT: I think what I said with respect to the presumption of innocence is what I will stand on.

MR. SCOTTO: As an attorney, I could not exactly hear what was said.

THE COURT: I read the standard charge



of circumstantial evidence.

MR. SCOTTO: And regarding Linda's statement, I know you cautioned the jury regarding her.

I know your Honor didn't say anything regarding Sally DiStefano as being binding on her.

I know you did charge them during the trial when the statement was elicited.

THE COURT: You mean the statement of Linda was not binding on Sally?

MR. SCOTTO: Yes.

THE COURT: I said it during the trial and I cautioned them to consider each one separately and only against them. I was troubled about it. I thought for some time about the exculpatory statement but felt it was appropriate for Linda.

I think if I try to add it's going to hurt you more than help you.

MR. SCOTTO: Your Honor, I would request that the jury again be charged on circumstantial evidence because of the Court's charge regarding an accomplice's testimony which

must be corroborated.

THE COURT: An accomplice's testimony can stand in and of itself.

MR. SCOTTO: There's no question about that and you made that very clear to the jury.

You also said if they have a doubt it must be corroborated by the circumstantial evidence.

THE COURT: I didn't say "circumstantial evidence" but "you must consider all the evidence".

No. I'm not going to charge that. It might get them confused.

It's all right the way it is.

MR. KATOWITZ: With the Court's permission, there are no objections to the charge on the part of Linda DiStefano; however, I would request one addition, which I think the Court maybe has charged by inference to the jury, that, specifically, if evidence is settled, to instruct whether it be one of guilt or one of innocence, that the jury must adopt that view consistent with innocence.

THE COURT: That's a confusing charge.



The law, as is stated, is a presumption and the defendants have a presumption of innocence and that remains with them throughout the trial, unless the Government has proved otherwise beyond a reasonable doubt and that's far stronger than the equal balance one you requested and it's the right one in a criminal case.

MR. SCOTTO: Your Honor, on that point, this is exactly the point I'm making. There were so many little bits of evidence and it has to be taken as a whole and under your charge, the presumption of innocence always remains with the defendant but it's difficult for the jurors to understand that.

They can say, "Yes, it points to innocence and it points to guilt" and that would clarify it.

THE COURT: I understand what you're saying but I'm not going to give it. I'll stand on the charge and I'll say it again, I'll leave it the way it is.

(The jury returned to the courtroom  
at 10:40 a.m.)

Now, alternate jurors, as the expression says, your time has come. You go with the thanks of the Court for all the attention you paid to the evidence and the trial of this case.

Unfortunately, you are not permitted to serve any further.

Oftentimes, someone gets sick or something happens to one or more jurors and you're called upon to take their place but in this case it's a fairly short trial and they are all healthy people and they are all around for the final date.

Take your card and retrieve anything you have in the jury room and check in with the Central Jury Room Clerk.

Thank you very much.

(Whereupon, the two alternate jurors left the courtroom)

Mr. Nims, will you swear in the Marshals?

(The Clerk of the Court gave the oath to the Marshals as to their responsibilities as to the custody of the jurors)



(The jury retired for deliberations  
at 10:42 a.m.)

I have a note from Juror 3 which reads:

"Do we have to come to a unanimous  
decision on all counts in order not  
to be considered deadlocked?"

Mark it as a Court Exhibit.

Bring the jury back.

(The jury returned to the courtroom  
at 10:43 a.m.)

Juror 3 has asked what I regard as an  
intelligent question but which I put in the  
category of getting to the brim before we  
go in.

It reads:

"Do we have to come to a unanimous  
decision on all counts in order  
not to be considered deadlocked?"

Let me answer that question by not answer-  
ing it direct at this stage.

You should try to reach a decision with  
respect to all counts in the indictment with  
respect to each defendant.

If you arrive at a decision on one count and

are hopelessly deadlocked on the other  
with respect to one or both of the defend-  
ants, after giving it a try, you can so  
advise the Court but rather than get into  
that, see what you can do.

(The jury retired for deliberations  
at 10:44 a.m.)

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IT IS ADJUDGED on Count 1 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of six (6) years and that the defendant shall become eligible for parole under Title 18, U.S. Code, Section 4205 (b)(2) at such time as the Parole Commission may determine;

**SPECIAL  
CONDITIONS  
OF  
PROBATION**

IT IS ADJUDGED on Count 2 of the indictment that the defendant is hereby committed to the custody of the Attorney General of his authorized representative for imprisonment for a term of six (6) years and that the defendant shall become eligible for parole under Title 18, U.S. Code, Section 4205 (b)(2) at such time as the Parole Commission may determine, such sentence of imprisonment to run concurrently with the sentence of imprisonment imposed under Count 1; and

**ADDITIONAL  
CONDITIONS  
OF  
PROBATION**

IT IS ADJUDGED on Count 3 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five (5) years and that the defendant shall become eligible for parole under In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT  
RECOMMEN-  
DATION**

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

*Thomas C. Blitt*

Date

*November 29, 1976*



continued .....

Title 18, United States Code, Section 4205(b)(2) at such time as the Parole Commission may determine, such sentence of imprisonment to run concurrently with the sentences of imprisonment imposed under Counts 1 and 2 of the indictment herein.

A TRUE COPY ATTEST  
4/10/77  
LEWIS JORGEN,  
BY *Leo J. Jorgensen* DEPUTY CLERK

MAILED



12/22  
~~Handwritten signature~~, 1977  
CERTIFICATE OF SERVICE

I certify that a copy of this [redacted] appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

Paul J. L. [signature]